IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1666 of 1998 (O&M)

Date of Decision: 04.07.2007

Rattan Singh & Anr. ..Petitioners

Vs.

Hari Ram & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Ajit Malik, Advocate,
for the petitioner.

Mr.Surinder Gandhi, Advocate,
for the respondents.

Vinod K.Sharma,J. (Oral)

CM No.20846-CII of 2006

For the reasons stated in the application the order dated 13.9.2006 is recalled and the revision petition is restored to its original number.

CR No.1666 of 1998

Present revision petition has been filed against the order passed

by the learned Civil Judge (Junior Division), Rohtak vide which application moved by the petitioner under Order 3 Rule 3 read with Section 151 of the Code of Civil Procedure has been ordered to be dismissed.

The petitioner-defendant moved an application in the pending suit claiming that the matter between the parties has been compromised on 21.7.1991 and therefore, the suit should be disposed of in terms of that compromise. The application was opposed by the plaintiff-respondents wherein a stand was taken that no compromise was entered into between the parties and furthermore, that the application for disposal of the suit was moved 3 years after entering into alleged compromise between the parties. It was also claimed in evidence that the signatures of the plaintiff-respondents and other persons were taken on blank paper and the compromise was written subsequently which is not binding on the parties.

The learned trial court was pleased to dismiss the application by observing as under:-

> "After hearing the arguments advanced by learned counsel for the parties I observe that one of the ingredient of a valid contract is free consent and two or more persons are said to consent, when they agree upon the same thing in the same sense, thing means the content of agreement, whether that refers to material objects or payment or any other act or promise. And in the compromise in question the basic requirement is lacking and that being so, I am of the mind that a person who has not given his free consent, cannot be compelled

> to act upon the compromise, therefore, finding no force in the arguments advanced by learned counsel for the applicant-defendant, the application is dismissed and suit be proceeded further for decision on merit and parties are hereby directed to adduce their evidence to decide the case on merit."

The learned counsel for the petitioner contends that once it was proved on record that the compromise has been signed by the plaintiff-respondents and furthermore, as no plea that signatures were taken on blank paper was raised in reply to the application it was not open to the court to have rejected the said application by observing that it was not of free consent.

However, learned counsel appearing on behalf of the respondent-plaintiffs has contended that a specific plea was taken that no compromise was entered into between the parties though the Panchayat was summoned for the said purpose and signatures, in fact, were taken prior to the commencement of the proceedings and alleged agreement was written subsequent to their leaving the place.

I have seen the compromise Ex.A.1 and find that there are no signatures of the parties on the page on which the writing of compromise has been written and signatures of number of persons exist on the back writing on the additional paper. Out of the said witnesses only three witnesses were produced besides the parties before the court. It may be noticed that the compromise contains certain stipulation with regard to the pendency of the cases which were not permitted by law to be compromised

and in this situation the compromise cannot be said to be legal or enforceable, the learned trial court was, therefore, right in coming to the conclusion that the compromise as agreed between the parties cannot be enforced and rightly dismissed the application moved by the petitioner.

No ground is made out which may call for interference in the impugned order by this court in exercise of revisional jurisdiction.

Dismissed.

July 4, 2007 **(Vinod K.Sharma)**
rp **Judge**